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Illinois Commerce Commission On its Own Motion	)	
	)	
Investigation Concerning Illinois Bell Telephone	)	Docket No. 01-0662
Company's compliance with Section 271 of the	)	
Telecommunications Act of 1996	)	

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**REBUTTAL AFFIDAVIT OF JAMES ZOLNIEREK**  
**MANAGER OF THE POLICY DEPARTMENT**  
**TELECOMMUNICATIONS DIVISION**  
**ILLINOIS COMMERCE COMMISSION**

**Dated: March 12, 2003**

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## **1. Introduction**

I, James Zolnierrek, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. My name is James Zolnierrek. I am employed by the Illinois Commerce Commission as the Manager of the Policy Department in the Telecommunications Division. My business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

## **II. Purpose of the Affidavit**

2. My affidavit is comprised of two parts. In the first part of my affidavit I will respond to the rebuttal affidavit of SBC Illinois Witness Ehr as it pertains to SBC Illinois' compliance with Checklist Item (iv) – Unbundled Local Loops.<sup>1</sup> In particular I will address four issues: (1) whether the Company returns FMOD unbundled stand-alone DSL loop Form A notifications within timeframes established by the Commission, (2) whether the Company provides unbundled DSL loops with linesharing installation quality and repair and maintenance service at parity, (3) whether the Company provides unbundled voice grade loop installation at parity, and (4) whether the

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<sup>1</sup> See Rebuttal Affidavit of James D. Ehr on Behalf of SBC Illinois (“Ehr Phase II Rebuttal Affidavit”).

Company installs unbundled voice grade, BRI, and DS1 loops at parity when the FMOD process is used.

3. The second part of my affidavit examines Phase I Compliance Issues. There are three issues I examine in this part of my affidavit: (1) whether the Company has satisfied the Commissions Phase I directive regarding tariff and interconnection agreement opt-in issues, (2) whether the Company has satisfied the Commission's Phase I directives regarding EELs performance measurement issues, and (3) whether the Company has satisfied the Commission's Phase I directives regarding UNE combination rate clarity issues. I will respond, respectively, to the rebuttal affidavits of SBC Illinois' Witnesses Alexander, Ehr, and Silver regarding these issues.<sup>2</sup>

### **III. Performance Measures and Standards**

#### ***Checklist Item 4 – Unbundled Local Loops***

##### **Unbundled Stand-Alone DSL Loops – FMOD Form A Responses**

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<sup>2</sup> See Phase 1 Compliance Rebuttal Affidavit of Scott J. Alexander on Behalf of SBC Illinois ("Alexander Phase 1 Compliance Affidavit"), Ehr Phase II Rebuttal Affidavit, and Phase 1 Compliance Rebuttal Affidavit of Michael D. Silver on Behalf of SBC Illinois ("Silver Phase 1 Compliance Affidavit"), respectively.

4. In my opening affidavit I indicated that, with respect to unbundled stand-alone DSL loops, the Company was not providing CLECs FMOD Form A notifications on time.<sup>3</sup> I recommended that “the Company should, in its rebuttal affidavits, explain why this problem is occurring and demonstrate that proper steps have been taken to ensure that the problem is corrected on a going forward basis.”<sup>4</sup>
5. In his rebuttal affidavit Mr. Ehr does not dispute that the Performance Measurement data that he included in Attachments A and B to his opening affidavit indicates that the Company is failing to provide FMOD Form A notifications in accordance with the standards established in the Company’s business rules. Rather he states that “[u]pon investigation, it was determined that the below-benchmark performance in these two months was due to inadvertent inclusion of certain loops that should have been excluded.”<sup>5</sup> Apart from the fact that Mr. Ehr’s statement indicates that the performance measurement data submitted by the Company is unreliable with respect to this measure, Mr. Ehr’s explanation is deficient in three respects. First, he fails to identify what loops were incorrectly included in PM CLEC WI 6 – 02 (Percent Form A Within Interval – DSL Loops without Linesharing) and why these loops should, according to the Company’s business rules, be properly excluded. Second, he fails to provide restated data that would indicate that the Company’s adjustments cause PM CLEC WI 6-02 to meet rather than

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<sup>3</sup> Staff Ex. 32.0 at ¶ 63.

miss the 24-business hour benchmark for this measure. Finally, while Mr. Ehr indicates that this correction was instituted effective with the December 2002 results<sup>6</sup> he fails to provide December 2002 and January 2003 data to support his assertion that the recalculated PM CLEC WI 6 – 02 now indicates the Company is meeting the 24-hour benchmark for this measure.

6. While Mr. Ehr has not provided December 2002 and January 2003 results in his rebuttal affidavit, these results were available from CLEC Online.<sup>7</sup> Schedule B to Mr. Ehr's initial affidavit indicated that from December 2001 through November 2002 the PM C WI 6 – 02 included on average over 167 orders per month. The information on CLEC Online indicates that there was only 1 stand-alone DSL order included in PM C WI 6-02 in December 2002 and 2 stand-alone DSL orders included in PM C WI 6-02 in January 2003. Thus, the Company's revised methodology excludes virtually all stand-alone DSL orders that would have been included under the previous methodology. In fact, the Company had insufficient data in December 2002 and January 2003 to compute z-scores. Nevertheless, despite the fact that only three orders were included in the December 2002 and January 2003 figures the Company missed the benchmark for 1 of the 3 orders. Therefore, the Company has submitted no evidence that it is sending FMOD Form A letters on time and in fact the little evidence it has provided suggests it is not.

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<sup>4</sup> Staff Ex. 32.0 at ¶ 63.

<sup>5</sup> Ehr Phase II Rebuttal Affidavit at ¶ 65.

<sup>6</sup> Ehr Phase II Rebuttal Affidavit at ¶ 65.

<sup>7</sup> See <https://pm.sbc.com/pm.cfm>.

*Summary and Recommendation*

7. As a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its stand-alone DSL loops in accordance with the requirements of Section 271(c)(2)(B)(iv), I continue to recommend that the Company take corrective action to ensure that FMOD Form A notifications related to stand-alone DSL orders are sent in a timely manner. The Company should in its surrebuttal affidavits: (1) thoroughly and completely explain why the PM C WI 6 – 02 measurements submitted in Attachments A and B to Mr. Ehr's initial affidavit were improperly calculated, (2) thoroughly and completely explain how the Company's revised calculation methodology corrects the problem and more accurately comports with the Company's business rules, and (3) provide recalculated September, October, and November 2002 performance data to demonstrate that recalculated C WI 6 – 02 PMs demonstrate that the Company is meeting the 24 business hour benchmark for this measure. If the Company complies with this request, Staff will consider this information and revise its recommendation accordingly. If the Company cannot or chooses not to comply with these requirements then Staff will recommend that the Commission decline to provide the Company a positive consultation with the FCC.

Unbundled DSL Loops With Line Sharing – Installation Quality and Repair and Maintenance

8. In my opening affidavit I stated that “[i]n installation quality and repair and maintenance of installed DSL loops with linesharing ... is not provided at parity as indicated by the fact that the Company is not meeting parity criteria with respect to submeasures 59-03 (*Percent Trouble Reports Within 30 Days of Installation – DSL – Linesharing*), 65-03 (*Trouble Report Rate – DSL – Linesharing*), 65.1-03 (*Trouble Report Rate Net of Installation and Repeat Reports – DSL – Linesharing*), 67-03 (*Mean Time to Restore – Dispatch – DSL – Linesharing*), 67-18 (*Mean Time to Restore – No Dispatch – DSL – Linesharing*), and 66-03 (*Percent Missed Repair Commitments – DSL – Linesharing*).”<sup>8</sup> I recommended that the “Company should, in its rebuttal affidavits, explain why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected on a going forward basis.”<sup>9</sup>
9. In his rebuttal affidavit Mr. Ehr does not dispute that submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03 did not meet parity standards. Rather, Mr. Ehr provides incomplete explanations for why the Company is experiencing performance problems with respect to these measures and does

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<sup>8</sup> Staff Ex. 32.0 at ¶ 78. Italicized portions added.

<sup>9</sup> Staff Ex. 32.0 at ¶ 79.



not explain how the steps the Company has taken to correct the problems will result in improved performance.

10. Exception 39 in Section II of E & Y's Exceptions to Compliance indicates that:

The Company improperly calculated the wholesale numerator during March, April, and May 2002 for the Lineshare submeasure. The Company only included trouble reports for the voice portion of the line and improperly excluded trouble reports related to the data portion of the line.<sup>10</sup>

As noted by Mr. Ehr, the Company made appropriate restatements shortly before submitting initial affidavits.<sup>11</sup> Mr. Ehr thus implies that, because the Company was improperly computing these PMs, it only recently became aware of its DSL with linesharing provisioning problems. Nevertheless, Mr. Ehr explains that the Company has taken a number of internal steps "to address maintenance and repair performance on CLEC DSL Lineshare loops" and outlines these steps.<sup>12</sup> While it is laudable that the Company is taking steps to address its maintenance and repair problems, Mr. Ehr's response to the concerns I raised in my initial affidavit is, in many respects, deficient.

11. For example, Mr. Ehr does not address the root cause of the Company's failure to meet parity standards with respect to submeasures 65-03 and 65.1-03. Absent any identifiable cause of these failures, it is unclear how the steps the Company has taken will remedy the problems indicated by these measures.

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<sup>10</sup> Affidavit of James D. Ehr on Behalf of SBC Illinois, Attachment Q, at 20.

12. Similarly, Mr. Ehr acknowledges that for PMs 67-03 and 67-18 “Staff Witness Zolnierrek notes that the results were still short of parity ... in September and October”, but provides no explanation for the root cause of these failures.<sup>13</sup> Rather Mr. Ehr simply asserts that “SBC Illinois’ Network organization is taking steps to address the performance issues, and the reported results are expected to be in parity or meet the applicable benchmark standard shortly.”<sup>14</sup>
13. With respect to submeasure 59-03 (Percent Trouble Reports Within 30 Days of Installation – DSL – Linesharing) Mr. Ehr explains “...one reason for performance shortfalls for [sic] PM 59-03 has been traced to the inability to identify minor facilities failures (such as shorts and grounds) at time of provisioning without dispatch of a technician.”<sup>15</sup> He does not indicate, however, whether this is the only or even the primary reason for the Company’s failure. Nor does he provide restated data that would indicate that if the “shorts and grounds” problems were corrected that PM 59-03 would have met parity standards for this measure. Finally, Mr. Ehr provides no explanation of how the steps the Company has taken to address maintenance and repair performance will ensure that this problem is corrected and will not recur on a going forward basis.

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<sup>11</sup> Ehr Phase II Rebuttal Affidavit at ¶ 50.

<sup>12</sup> Ehr Phase II Rebuttal Affidavit at ¶ 50.

<sup>13</sup> Ehr Phase II Rebuttal Affidavit at ¶ 52.

<sup>14</sup> Ehr Phase II Rebuttal Affidavit at ¶ 52.

14. Mr. Ehr also acknowledges that the Company failed to meet parity standards in September and October for PM 66-03.<sup>16</sup> He again fails to identify any discernable cause arguing instead that the absolute number of failures with respect to CLECs was not significantly greater than the absolute number of failures with respect to the Company's affiliate.<sup>17</sup> Mr. Ehr's argument does not counter the fact that the Company did not meet the Commission-approved standards established for this measure. Furthermore, it contradicts his approach to analyzing other performance measurement data.

15. For example, in my initial affidavit I identified a large disparity between the Company's provision of service to CLECs and to its affiliate as measured by PM 67-04 (Mean Time to Restore – Dispatch – DSL – No Linesharing).<sup>18</sup> Because 67-04 is a benchmark measure and not a parity measure I did not recommend any remedial action with respect to this measure. Nevertheless Mr. Ehr chooses to address the Company's disparate service provision by stating "...the Commission-approved standard is a benchmark, not parity."<sup>19</sup> Thus, with respect to PM 66-03 Mr. Ehr argues that the Commission-approved standard is irrelevant because the Company was in absolute terms providing very little disparate service while arguing that with respect to PM 67-04 the Company's high level of disparate service provision is irrelevant because the Company was meeting the Commission-approved standard.

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<sup>15</sup> Ehr Phase II Rebuttal Affidavit at ¶ 48.

<sup>16</sup> Ehr Phase II Rebuttal Affidavit at ¶ 54.

<sup>17</sup> Ehr Phase II Rebuttal Affidavit at ¶ 53.

<sup>18</sup> Staff Ex. 32.0 at ¶ 56.

16. Thus, similar to his explanation for other performance failures, Mr. Ehr's explanation for the Company's failure of PM 66-03 is deficient. First, he does not identify any cause for the failure. Second, Mr. Ehr provides no explanation of how the steps the Company has taken to address maintenance and repair performance will ensure that this problem is corrected on a going forward basis.

*Summary and Recommendation*

17. As a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its DSL loops with linesharing in accordance with the requirements of Section 271(c)(2)(B)(iv), I continue to recommend that the Company take corrective action to ensure that it is providing loop quality and maintenance and repair of DSL loops with linesharing at parity. The Company should in its surrebuttal affidavits: (1) thoroughly and completely explain why it failed parity criteria for submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03, (2) thoroughly and completely explain how the steps the Company has taken to address maintenance and repair performance will result in the Company meeting the applicable parity standards, (3) provide a detailed timetable for implementation of its remedial actions, and (4) commit to reporting to the Commission on the progress it has

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<sup>19</sup> Ehr Phase II Rebuttal Affidavit at ¶ 54.

made in meeting parity standards until such time as the Company demonstrates that it has corrected the problems identified above.

Unbundled Voice Grade Loops – Installation Timing

18. In my opening affidavit I noted that “[f]or the three months ending November of 2002, the Company failed to meet parity criteria for PMs 55-01.1 (*Average Installation Interval – 2 Wire Analog Loops – 1-10*), 55-01.2 (*Average Installation Interval – 2 Wire Analog Loops – 11-20*), and 55-01.3 (*Average Installation Interval – 2 Wire Analog Loops – 20+*) three out of the eight times parity criteria were evaluated” and that “[a]s reflected in PMs 56-01.1 (*Percent Installations Completed Within the Customer Requested Due Date 2-Wire Analog – 1-10*) and 56-01.2 (*Percent Installations Completed Within the Customer Requested Due Date 2-Wire Analog – 11-20*) the Company missed parity criteria for meeting non-standard customer requested due dates one out of the six times parity criteria were evaluated.”<sup>20</sup> I recommended that “[t]he Company should, in its rebuttal affidavits, explain why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected and will not recur on a going forward basis.”<sup>21</sup>

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<sup>20</sup> Staff Ex. 32.0 at ¶ 92. Italicized portions added.

<sup>21</sup> Staff Ex. 32.0 at ¶ 93.

19. Mr. Ehr does not address the Company's problem meeting parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3. He notes only that the Company met parity criteria for the September 2002 to November 2002 period in two of three months for submeasures 55-01.1 and 55-01.2. He does not address the Company's failure to meet parity criteria in one of two months for which data was available for submeasure 55-01.3. Nor does he address the fact that the Company failed parity criteria for installation intervals for voice-grade loops more than 37% of the time in the period beginning in September 2002 and ending in November 2002.

20. Recent performance measurement data indicate that the Company's performance problems with respect to measures 55-01.1, 55-01.2, and 55-01.3 have continued. For example the Company failed parity tests with respect to measure 55-01.2 in December 2002 and failed parity tests with respect to measure 55-01.1 in January 2003.<sup>22</sup>

21. Similarly, Mr. Ehr does not address the Company's failure to meet parity standards with respect to PMs 56-01.1 and 56-01.2. Nor does he explain why the Company has missed these measures. With respect to measures 56-01.1 and 56-01.2 the Company's performance has improved in recent

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<sup>22</sup> See <https://pm.sbc.com/pm.cfm>.

months. The Company has passed all parity tests for these measures in both December 2002 and January 2003.<sup>23</sup>

*Summary and Recommendation*

22. In my initial affidavit I stated my opinion that "... it is essential if competitors are to have the opportunity to compete for local telephone customers in Illinois using stand alone voice grade loops that SBC Illinois' performance in installing and servicing voice grade loops not impair or impede competitors ability to compete."<sup>24</sup> The Company has failed to address its performance problems with respect to voice grade loops. Therefore, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning it's voice grade loops in accordance with the requirements of Section 271(c)(2)(B)(iv), I continue to recommend that the Company take corrective action to ensure that it is providing voice grade loops at parity. The Company should in its surrebuttal affidavits: (1) thoroughly and completely explain why it failed parity criteria for submeasures 55-01.1, 55-01.2, and 55-01.3, (2) thoroughly and completely explain what steps the Company will take to ensure that it meets the applicable parity standards, (3) provide a detailed timetable for implementation of its remedial actions, and (4) commit to reporting to the Commission on the progress it has made in meeting parity

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<sup>23</sup> See <https://pm.sbc.com/pm.cfm>.

<sup>24</sup> Staff Ex. 32.0 at ¶ 93.

standards until such time as the Company demonstrates that it has corrected the problems identified above.

Unbundled Voice Grade Loops/Unbundled BRI (digital) Loops/ Unbundled DS1 Loops – FMOD Due Date

23. In my initial affidavit I stated that the Company is with respect to submeasures C WI 11-01.4 (*Percent FMOD Due Dates Met Following Form B – 8.0 dB Loops without Test Access*), C WI 11-01.5 (*Percent FMOD Due Dates Met Following Form D – BRI Loops with Test Access*), and C WI 11-01.6 (*Percent FMOD Due Dates Met Following Form D – DS1 Loops*) failing parity criteria for meeting dates for FMOD installations.”<sup>25</sup> I recommended with respect to each of these problems that the Company should, in its rebuttal affidavits, explain why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected and will not recur on a going forward basis.<sup>26</sup>

24. With respect to the Company’s failure to meet FMOD due dates Mr. Ehr argues that the Company met parity criteria for PM C WI 11 in October and November of 2002.<sup>27</sup> As I noted in my initial affidavit, with respect to PM C WI 11-01.4 “[t]hroughout the period beginning in December 2001 and ending in November of 2002 the company has missed due dates a high percentage

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<sup>25</sup> Staff Ex. 32.0 at ¶ 90, ¶ 105, and ¶ 121. Italicized portions added.



of the time, including missing as many as 25% of due dates in April and September of 2002.”<sup>28</sup> With respect to PM C WI 11-01.4, this pattern has continued with the Company missing 10% of FMOD due dates for voice-grade loops in December 2002 and over 44% of FMOD due dates for voice-grade loops in January 2003.<sup>29</sup> In both cases, however, there were too few observations for the Company to compute z-scores. With respect to PM C WI 11-01.5 I stated “[t]hroughout the period beginning in December 2001 and ending in November of 2002 the company has missed due dates a high percentage of the time, including missing as many as 30% of due dates in September of 2002.”<sup>30</sup> The Company did, however, meet the parity standard in its business rules for this measure in December.<sup>31</sup> With respect to PM C WI 11-01.6 I stated “[t]hroughout the period beginning in December 2001 and ending in November of 2002 the company has missed due dates a high percentage of the time, including missing as many as 11.54% of due dates in October of 2002.”<sup>32</sup> The Company’s performance in January 2003 improved significantly with the Company meeting all DS1 FMOD due dates.<sup>33</sup> Examining the Company’s performance in the period beginning in November 2002 and ending in January 2003, the Company has not failed a single parity test as measured by z-score calculations.<sup>34</sup>

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<sup>26</sup> Staff Ex. 32.0 at ¶ 93, ¶ 107, and ¶ 123.

<sup>27</sup> Ehr Phase II Rebuttal Affidavit at ¶ 65.

<sup>28</sup> Staff Ex. 32.0 at ¶ 90.

<sup>29</sup> See <https://pm.sbc.com/pm.cfm>.

<sup>30</sup> Staff Ex. 32.0 at ¶ 105.

<sup>31</sup> See <https://pm.sbc.com/pm.cfm>.

<sup>32</sup> Staff Ex. 32.0 at ¶ 121.

<sup>33</sup> See <https://pm.sbc.com/pm.cfm>.

<sup>34</sup> See <https://pm.sbc.com/pm.cfm>.

*Summary and Recommendation*

25. Certainly the Company has missed a high percentage of FMOD due dates in the past year and has of late continued with respect to some submeasures to miss a high percentage of due dates. However, because the Company has not failed any parity tests for the most recent three months of performance measurement data I now modify my recommendation with respect to the Company's performance as measure by PM C WI 11. I now recommend that the Commission find that the Company is meeting FMOD due dates for voice-grade loops, BRI loops, and DS1 loops in accordance with the requirements of Section 271(c)(2)(B)(iv).

**IV. Phase I Compliance**

***Checklist Item 2***

Tariff and Interconnection Agreement Opt-In

26. In my initial affidavit in this proceeding I articulated my understanding of the Company's opt-in policies as they applied to CLECs ability to opt-in to UNE rates, terms, and conditions contained in the Company's tariffs and effective

interconnection agreements.<sup>35</sup> I noted, however, that simple articulation of a policy does not ensure that the policy is or will be followed and subsequently recommended that the Company commit to the policies articulated by Mr. Alexander "...to ensure that the Company is making available to all carriers in Illinois those UNE rates, terms, and conditions that it has presented as proof of its compliance with Section 271."<sup>36</sup>

27. With respect to my recommendation Mr. Alexander indicates the Company will not agree to commit in writing to the policies it asserts it will follow in order to comply with Section 271.<sup>37</sup> Mr. Alexander, however, proposes to post opt-in language to its CLEC Online website that clarifies the Company's policies regarding opt-in.<sup>38</sup>

28. As Mr. Alexander notes, the opt-in requirements that are imposed on the Company by state and federal law change from time to time.<sup>39</sup> Such changes may require that the Company change its opt-in policies. Therefore, I concur with Mr. Alexander that a binding "written commitment", as I had proposed in my initial affidavit, may not be the most appropriate mechanism for ensuring that the Company follows 271 compliant opt-in policies. However, the Company should provide the Commission with assurance that it has committed to follow Section 271 compliant opt-in policies and that it will not

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<sup>35</sup> Staff Ex. 32.0 at ¶ 131.

<sup>36</sup> Staff Ex. 32.0 at ¶ 134.

<sup>37</sup> Alexander Phase I Compliance Rebuttal Affidavit at ¶ 4.

<sup>38</sup> Alexander Phase I Compliance Rebuttal Affidavit at ¶ 5.

change its opt-in policies absent changes in state or federal law that change the Company's Section 271 opt-in requirements. The Company's proposal to include its opt-in policies on its CLEC Online website, if implemented, resolves this issue by providing CLECs and the Commission a vehicle to monitor the Company's opt-in policies and address any 271 compliance issues that may arise regarding these policies.

*Summary and Recommendation*

29. Considering the arguments made by Mr. Alexander in his rebuttal affidavit, I revise my recommendation and now recommend the Commission find that the Company's proposal to post its opt-in policies on its CLEC Online website comports with the directives in the Commission's Interim Order.<sup>40</sup> However, to ensure that my recommendation and the Commission's decision is informed, the Company should submit in its surrebuttal affidavits the proposed language it intends to make available to CLECs on the Company's CLEC Online website. Provided this language clearly and accurately explains the opt-in policies articulated by Mr. Alexander in this proceeding, Staff recommends that the Commission consider this issue resolved through implementation of the Company's proposal. Otherwise, Staff recommends that the Commission withhold a positive consultation with the FCC regarding the Company's compliance with Section 271(c)(2)(B)(ii) of the 1996 Act.

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<sup>39</sup> Alexander Phase I Compliance Rebuttal Affidavit at ¶ 4.

### EEL Performance Measurement

30. In my initial affidavit in this proceeding I explained that the proposed performance measurement system the Company will use for EELs is deficient because it does not account for delays in provisioning associated with the Company's EELs precertification process. I explained that the Company's precertification process might cause EELs provisioning delays that put the CLECs using EELs at a competitive disadvantage.<sup>41</sup>

31. Mr. Ehr does not address this concern. He indicates only that the Company's proposed EEL performance measurements "...address the requirements of the Phase I Order."<sup>42</sup> Mr. Ehr does not dispute the fact that the Company's proposed EELs PMs are deficient. Therefore, it is unclear how the proposed EELs PMs comport with the Commission's Interim Order.<sup>43</sup>

### *Company Compliance Filing*

32. Based on Mr. Ehr's response to my concerns, I reaffirm my recommendation from my initial affidavit. In order to ensure that the Company is effectively measuring its performance in providing EELs in Illinois, the Company must

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<sup>40</sup> Phase I Interim Order on Investigation, Docket No. 01-0662, at ¶ 713, subsection a.

<sup>41</sup> Staff Ex. 32.0 at ¶ 141.

<sup>42</sup> Ehr Phase II Rebuttal Affidavit at ¶ 242.

<sup>43</sup> Phase I Interim Order on Investigation, Docket No. 01-0662, at ¶¶ 714-716.

specifically account for its conversion certification process and any similar certification processes applied to new EELs in its performance measurement system. The Company should explain in its surrebuttal affidavits how it will address this problem so that Staff and Intervenor can evaluate the Company's proposed remedy and make an informed recommendation to the Commission. If the Company does not address this problem Staff recommends that the Commission withhold a positive consultation with the FCC regarding the Company's compliance with Section 271(c)(2)(B)(ii) of the 1996 Act.

#### EEL and UNE-P Rate Clarity

33. In my initial affidavit I stated that "...the Company has through a combination of Mr. Silver's Phase I Compliance Affidavit, the Company's responses to Staff data requests, and Mr. Silver's verbal explanations, clarified application of its UNE combination rates, in particular its EEL and UNE-P combination rates."<sup>44</sup> However, I noted that to be effective this information must be made available to CLECs in Illinois. I recommended that "[t]he Company should ... explain in its rebuttal affidavits the steps it will take to ensure that this information is available to CLECs in Illinois."<sup>45</sup>

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<sup>44</sup> Staff Ex. 32 at 148.

<sup>45</sup> Staff Ex. 32 at 149.

34. Mr. Silver responded to my recommendations with an outline of steps the Company will or could take to ensure that the rate information presented in this proceeding is available to CLECs in Illinois. First Mr. Silver proposes to insert language into the Company's tariff that clarifies the application of the Company's EEL carrier connection charge.<sup>46</sup> Mr. Silver also submits a matrix that explains EELs charges that the Company proposes to insert in the Company's CLEC Online Handbook.<sup>47</sup> Finally, Mr. Silver indicates that if the Commission requires additional clarity with respect to UNE-P charge application, the Company proposes to insert a matrix that explains UNE-P charges in the Company's CLEC Online Handbook.<sup>48</sup> These three steps, if taken by the Company, would resolve this issue.

#### *Summary and Recommendation*

35. In light of Mr. Silver's proposals, I revise my recommendation with respect to this issue. I recommend that the Company take the three actions proposed by Mr. Silver to resolve this issue. The Company should insert the proposed tariff language that clarifies the application of the Company's EEL carrier connection charge submitted by Mr. Silver into the Company's tariff. The Company should also insert both the EEL and UNE-P rate application matrices into its CLEC Online Handbook. If the Company takes these steps during this proceeding, Staff will recommend that the Commission consider

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<sup>46</sup> Silver Phase II Rebuttal Affidavit at ¶ 5.

this issue from the Commission's Interim Order resolved.<sup>49</sup> If the Company does not take these steps during this proceeding, Staff will recommend that the Commission withhold a positive consultation with the FCC regarding the Company's compliance with Section 271(c)(2)(B)(ii) of the 1996 Act.

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<sup>47</sup> Silver Phase II Rebuttal Affidavit, Schedule MDS-1.

<sup>48</sup> Silver Phase II Rebuttal Affidavit ¶ 12 and Schedule MDS-2.

<sup>49</sup> Phase I Interim Order on Investigation, Docket No. 01-0662, at 713, subsection d.



State of Illinois        )

City of Springfield    )

### AFFIDAVIT OF JAMES ZOLNIEREK

James Zolnierек, under oath, deposes and states as follows:

1. My name is James Zolnierек. My business address is 527 East Capitol Avenue, Springfield, Illinois 62701. I am the Manager of the Policy Department of the Telecommunications Division of the Illinois Commerce Commission.

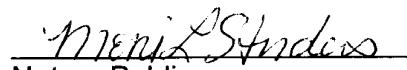
2. The attached rebuttal affidavit prepared for use in Phase 2 of Docket 01-0662 is based on my personal knowledge.

3. I hereby swear and affirm that the information contained in the document cited above are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.

  
James Zolnierек

Subscribed and sworn to before me this 11<sup>th</sup> day of March, 2003.

  
Notary Public

